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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/689,005
Filing Date: October 20, 2003
Appellant(s): GOODE ET AL.

Eamon J. Wall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 20, 2009 appealing from the Office action mailed November 13, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,016,141	Knudson et al.	1-2000
5,771,435	Brown	6-1998
6,477,504	Hamlin et al.	11-2002

6,828,993	Hendricks et al.	12-2004
7,032,176	Gordon et al.	4-2006
6,314,575	Billock et al.	6-2001
6,163,272	Goode et al.	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson et al. (U.S. Patent No. 6,016,141) in view of Brown (U.S. Patent No. 5,771,435) and Hamlin et al., U.S. Pat. No. 6,477,504 B1 (hereinafter Hamlin).

Regarding claim 1: Knudson discloses an interactive information distribution system containing service provider equipment and subscriber equipment that is interconnected by a communications network (see [fig. 1]), a method of providing a subscription-on-demand service for an interactive information distribution system comprising the steps of: packaging a number of

subscription programs into programming packages wherein said programming packages comprise a hierarchical structure, which may be multi-tiered or grouped; and enabling a subscriber to access any program within a subscribed programming package (see [abstract], [col. 1, ll. 57-63], [col. 3, ll. 2-16], [col. 4, ll. 58-65], [col. 6, ll. 22-41]).

Knudson is silent on allowing a user to access a program in an on-demand basis and wherein the interface is produced using one or more applets.

Brown however teaches a system that processes request for programming by providing the user with the option of near on demand video or video on demand (see [abstract], [col. 2, ll. 14-23], [col. 2, ll. 55-67], [col. 3, ll. 31-51]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide a user with the option of receiving programming in an on-demand basis, as taught in Brown, when providing access to programming through subscription-on-demand services, as taught in Knudson, because providing users with videos in an on-demand basis is in accordance with providing an interactive services to simplify home entertainment by allowing viewers greater flexibility and control over content (see Brown: [col. 1, ll. 23-24]).

Hamlin teaches the use of a dynamically delivered applet for the purpose of generating an interactive user interface to gathering information from a client display unit such as a television set rather than a locally-stored program that generates an interface (see [col. 6, ll. 39-51] for using an applet to gather data from a client device to be later processed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the GUI used to collect information from viewers, as taught in Knudson, by using dynamically delivered applets, as taught by Hamlin, in order to enable future updates to be made to the function or appearance of the GUI without having to modify the client system.

Regarding claim 2: Knudson, in view of Brown and Hamlin, teach the method of claim 1 further comprising the step of: enabling a consumer to select a programming package and subscribe to the selected programming package for a predefined price and thereby become said subscriber (see Knudson: [fig. 6, items 92, 98 and 114], [col. 3, ll. 9-16], [col. 6, ll. 55-57]).

Regarding claim 3: Knudson, in view of Brown and Hamlin, teach the method of claim 1 wherein a subscriber is limited to on-demand access to on-demand programs within the subscribed programming package only during predefined time periods without incurring an additional fee (see Knudson: [col. 6, ll. 22-27], [col. 8, ll. 58-63]).

Regarding claim 4: Knudson, in view of Brown and Hamlin, teach the method of claim 1 wherein said on-demand programming within said programming package is defined by the subscriber (see Knudson: [col. 5, ll. 13-24], [col. 6, ll. 33-35]).

Regarding claim 5: Knudson, in view of Brown and Hamlin, teach the method of claim 1 wherein the programming packages are arranged in a hierarchical format having subsets of programming packages within a

programming package to enable a viewer to subscribe to a programming package subset without subscribing to an entire programming package (see Knudson: [fig. 7], [fig. 8], [col. 5, ll. 13-24], [col. 6, ll. 4-35], [col. 6, ll. 33-35]).

Regarding claim 6: Knudson, in view of Brown and Hamlin, teach the method of claim 1 wherein a consumer selects a programming package and subscribes thereto by manipulating a graphical user interface (see Knudson: [fig. 2], [fig. 6], [col. 1, ll. 57-63]).

2. Claims 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson, in view of Hendricks et al., U.S. 6,828,993 B1 (hereinafter Hendricks) and Gordon et al., U.S. 7,032,176 B2 (hereinafter Gordon).

Regarding claim 7: Knudson discloses in an interactive information distribution system containing service provider equipment and subscriber equipment that is interconnected by a communications network, a method of providing a subscription service for an interactive information distribution system (see [abstract], [fig. 6], [fig. 9], [col. 1, ll. 55-65], [col. 4, ll. 16-47]). While Knudson teaches providing users with graphical user interfaces (GUI) to receive user selections and then respond accordingly by use of visual displays to provide information about selectable programs which are free and can be tuned for viewing, in addition to providing additional menus in response to the selections made by users which include options to subscribe to subscription content having hierarchical structures (see [abstract], [fig. 2]; see also [fig. 6, items 88 and 96]; see also [col. 1, ll. 55-65], [col. 6, ll. 22-41] where the ability to create a

subset by selecting individual teams from a plurality of leagues and teams to create an "a la carte" package, as per the example, reads on dynamically defining a subset which; see also where such a organization of leagues and teams is representative of a hierarchical structure in that sports teams are a subset of individual leagues, which are also a subset of sports programs (i.e. football, baseball, soccer, volleyball, etc.).

Knudson, however does not explicitly teach, providing a viewer with subscription options in the manner as claimed, where menus are provided step by step such that a viewer is presented with subscription options that can be accessed if the viewer is a current subscriber or subscribed to if not.

Hendricks teaches providing a general menu which displays a primary subscription option screen (see [fig. 23], [fig. 22c] where a user can drill down to a desired subscription option), once a user has selected a choice a determination is made as to whether the user is a current subscriber or not such that if the viewer is not a current subscriber the viewer can purchase a subscription to the content being offered (see [col. 38, ll. 6-43] where options are provided to select to join a channel if it is determined that the user is a current subscriber and the option to become a subscriber is provided if not). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the options available to the viewer, by providing viewers which have not subscribed to requested content to be able to subscribe to the requested content,

as taught by Hendricks, in order to simplify the involvement on behalf of the customer who would like to immediately view desired programming.

Hendricks however does not teach providing this menu through the use of applets. Gordon teaches providing an interactive menu system where the menu structure has each menu contained in downloadable applets such that each menu which is displayed requires a service provider to send an applet which is then processed by the subscriber equipment providing a user with an option to select an available option which is then communicated back to the service provider equipment to follow up with a related menu (see [abstract], [cols. 13-14, ll. 47-11], [col. 2, ll. 40-55], [col. 3, ll. 13-51]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify technology used to present the menus to the end user, by using applets, as taught by Gordon, in order to provide a more dynamic and customizable interactive experience.

Regarding claim 8: Knudson, in view of Brown, Billock and Hamlin, teaches the method of claim 7 wherein second menu applet is connected to other menu applets that provide interactive displays of categories of services, titles of programs available in each category, and program pricing for each tile (see Knudson: [col. 3, ll. 9-16], [col. 4, ll. 32-37], [col. 4, ll. 42-47], [col. 4, ll. 58-65]).

Regarding claim 9: Knudson, in view of Brown, Billock and Hamlin, teaches the method of claim 7 further comprising the step of: if a new subscription is created, updating a subscription database within said service

provider equipment to identify the subscriber as a subscriber to the selected service (see Knudson: [fig. 6], [col. 3, ll. 22-31], [col. 6, ll. 42-51] for service provider equipment database that is updated as indicated by it updating the user equipment database).

Regarding claim 12: Knudson, in view of Brown, Billock and Hamlin, teaches the method of claim 7 wherein the subscriber selects programming for a personal subscription-on-demand service and a personal subscription-on-demand option is included in said display produced from said first menu applet (see Knudson: [fig. 8] where an option selected is included in a package which can be selected; see also [col. 6, ll. 22-35] for alternative subscription on-demand options).

Regarding claim 13: Knudson, in view of Brown, Billock and Hamlin, teaches the method of claim 7 wherein said subscription-on-demand services are arranged in a hierarchical structure (see Knudson: [fig. 7], [fig. 8] for a hierarchal structure including a parent category with a subset of categories within the parent category; see also Knudson: [col. 1, ll. 40-41], [col. 6, ll. 4-35]).

3. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson, in view of Brown, Billock, Hamlin and Goode et al., International Pub. No. 98/19459 (hereinafter Goode).

Regarding claims 10 and 11: Knudson, in view of Brown, Billock and Hamlin, teaches authorizing a user to subscribe on-demand to programming and programming packages through the use of a graphical user interface (GUI) and

performing some action in response (see Knudson: [fig. 2], [fig. 6], [fig. 7], [col. 3, ll. 27-31], [col. 4, ll. 42-47], [col. 4, ll. 58-65]) and using dynamically delivered applets which generate interfaces which are used to receive user input (see Hamlin [col. 6, ll. 39-51] but does not disclose the method of claim 7 further comprising the step of: if a subscriber requests a new subscription, sending a fourth menu applet from said service provider equipment and decoding and executing said fourth menu applet within said subscriber equipment to display a menu that requests a personal identification number (PIN) or master PIN for said subscriber.

Goode teaches an access authorization routine which request a personal identification number (PIN) or master PIN using an interactive graphical method which is executed upon a customer requesting access to information on an information distribution system (see [fig. 3 items 326 & 328], [pp. 2-3, ll. 33-32], [pp. 6-7, ll. 24-6]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to execute an applet capable of using an interactive graphical method to require a user to enter a PIN or master PIN, as taught in Goode, when authorizing a user to subscribe to on-demand programming and programming packages, as taught in Knudson, because it is often necessary to provide system security for interactive information distribution systems (see [pp. 1, ll. 32-33]).

4. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson, in view of Brown, Goode and Hamlin.

Regarding claim 14: Knudson discloses a method of providing a subscription service for an interactive information distribution system comprising the steps of: providing a programming selection menu through which a subscriber selects programming for a personal subscription service; selecting programming to define said personal subscription service comprising a hierarchical structure, which may be multi-tiered or grouped; and accessing programming for a predefined price and period (see [fig. 2], [figs. 6-8], [col. 3, ll. 9-16], [col. 4, ll. 58-65], [col. 6, ll. 22-41]).

Knudson is silent on allowing a user to access a program in an on-demand basis; storing programming identification codes associated with said selected programming and a subscriber identification number; enabling said subscriber, through use of said subscriber identification number, to access said personal subscription-on-demand service by paying a single predefined price for access to the programming identified by the programming identification codes for a predefined period; and using a menu applet to gather an identification number from the user.

Brown however teaches a system that processes request for programming by providing the user with the option of near on demand video or video on demand (see [abstract], [col. 2, ll. 14-23], [col. 2, ll. 55-67], [col. 3, ll. 31-51]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide a user with the option of receiving programming in an on-demand basis, as taught in Brown, when providing access to programming through subscription-on-demand services, as taught in Knudson, because providing users with videos in an on-demand basis is in accordance with providing an interactive services to simplify home entertainment by allowing viewers greater flexibility and control over content (see Brown: [col. 1, ll. 23-24]).

Goode teaches storing programming identification codes associated with said selected programming (such as MPAA ratings) and a subscriber identification number; and accessing said programming through the use of said subscriber identification number (see [figs. 2-5], [pp. 2-3, ll. 33-5], [pp. 3, ll. 6-32], [pp. 3-4, ll. 32-1]) but does not teach doing so using an applet interface.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to associate some form of program identification code with a subscriber identification number such as a PIN where said association determines access, as taught in Goode, when providing subscription on-demand services, as taught in Knudson, because providing a PIN which can be associated with particular programming provides more flexible and useful security measures such as customizable access (see [pp. 2, ll. 9-12]).

Hamlin teaches the use of a dynamically delivered applet for the purpose of generating an interactive user interface to gathering information from a client display unit such as a television set rather than a locally-stored program that

generates an interface (see [col. 6, ll. 39-51] for using an applet to gather data from a client device to be later processed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the GUI used to collect information from viewers, as taught in Knudson, by using dynamically delivered applets, as taught by Hamlin, in order to enable future updates to be made to the function or appearance of the GUI without having to modify the client system.

Regarding claim 15: The combined teachings of Knudson, in view of Brown and Hamlin, do not teach wherein said subscriber identification number is one of a personal identification number, a terminal identification number, or an account number.

Goode teaches where a subscriber can be identified using a PIN, terminal identification number, or an account number (see [fig. 1 items 102 & 104], [pp. 2-3, ll. 33-5], [pp. 6-7, ll. 24-1]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to use other forms of identification such as PIN, terminal identification number or account number, as taught in Goode, when providing subscription on-demand services, as taught in Knudson, because providing alternate forms of identification provides more flexible and useful security measures (see [pp. 2, ll. 9-12]).

Regarding claim 16: Knudson discloses apparatus for providing subscription services within an interactive information distribution system

comprising: service provider equipment containing an information server and a video session manager (see [fig. 1 items 22, 24, 26]; see also [col. 1, ll. 5-18], [col. 1, ll. 26-28], [col. 1, ll. 44-46], [col. 2, ll. 9-18], [col. 3, ll. 37-39] for a program guide system which reads on a video session manager); subscriber equipment containing a subscriber terminal and a display unit, where the service provider equipment is connected to the subscriber equipment by a communications network (see [fig. 1, item 32]); and said video session manager sends a plurality of executable menus to said subscriber terminal, said terminal executes each of said menu applets to generate interactive graphical user interface displays through which a subscriber selects a service comprising a hierarchical structure, which may be multi-tiered or grouped (see [col. 6, ll. 22-41] for a multi-tiered or grouped type subscription service); if the subscriber is said current subscriber of the selected service, the subscriber can select a subscription program for viewing; if said subscriber is not said current subscriber, the subscriber can become a subscriber to the selected service (see [abstract], [col. 1, ll. 57-63], [col. 3, ll. 2-16], [col. 3, ll. 27-31] [col. 4, ll. 58-65], [col. 8, ll. 58-63]; see [fig. 7] for a menu gui; see also [col. 3, ll. 45-62] transmitting data between the distribution facility and user equipment; [col. 3-4, ll. 63-3] for decoding by demodulation, the transmissions; [col. 4, ll. 42-47], [col. 4, ll. 58-65] for displaying an executed GUI received from the received transmissions which the user can select from).

Knudson is silent on allowing a user to access a program in an on-demand basis; and the subscriber terminal sending a service request to said session manager for processing.

Brown however teaches a system that processes request for programming by providing the user with the option of near on demand video or video on demand (see [abstract], [col. 2, ll. 14-23], [col. 2, ll. 55-67], [col. 3, ll. 31-51]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to provide a user with the option of receiving programming in an on-demand basis, as taught in Brown, when providing access to programming through subscription-on-demand services, as taught in Knudson, because providing users with videos in an on-demand basis is in accordance with providing an interactive services to simplify home entertainment by allowing viewers greater flexibility and control over content (see Brown: [col. 1, ll. 23-24]).

Goode however teaches an information server and session manager that provides data streams in response to selection request (which reads on a signal) for information from an interactive network interface used to communicate the selection to the provider (see [fig. 1 items 102 & 104], [pp. 3, ll. 6-34], [pp. 5, ll. 12-13], [pp. 2-3, ll. 33-5], [pp. 6-7, ll. 24-1]).

At the time the invention was made it would have been obvious to one of ordinary skill in the art to use a selection signaling mechanism such as a information request to indicate a request for information, allowing the user to receive data, as taught in Goode, when receiving user selections indicating

preferred subscription on-demand services, as taught in Knudson, because some form of signaling mechanism is needed to convey the user's selection via a graphical user interface to a remote device.

Hamlin teaches the use of a dynamically delivered applet for the purpose of generating an interactive user interface to gathering information from a client display unit such as a television set rather than a locally-stored program that generates an interface (see [col. 6, ll. 39-51] for using an applet to gather data from a client device to be later processed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the GUI used to collect information from viewers, as taught in Knudson, by using dynamically delivered applets, as taught by Hamlin, in order to enable future updates to be made to the function or appearance of the GUI without having to modify the client system.

Regarding claim 17: The combined teachings of Knudson, in view of Brown, teach the apparatus of claim 16 wherein the subscriber terminal decodes and executes the applets that are sent by the session manager to produce said interactive graphical user interface displays (see Knudson [fig. 2], [figs. 7-9], [col. 3-4, ll. 63-3], [col. 4, ll. 32-37], [col. 4, ll. 42-47] for demodulating and displaying a GUI).

Knudson is silent on sending to the video session manager selection signals indicative of a selected option within said interactive graphical user interface displays.

Goode however teaches an information server that provides data streams in response to selection request (which reads on a signal) for information from an interactive network interface used to communicate the selection to the provider (see [fig. 1 items 102 & 104], [pp. 3, ll. 6-34], [pp. 5, ll. 12-13], [pp. 2-3, ll. 33-5], [pp. 6-7, ll. 24-1]).

At the time the invention was made it would have been obvious to one of ordinary skill in the art to use a selection signaling mechanism such as a information request to indicate a request for information allowing the user to receive data, as taught in Goode, when providing subscription on-demand services, as taught in Knudson, because some form of signaling mechanism is required to convey the user's selection via a graphical user interface to a remote device.

Hamlin teaches the use of a dynamically delivered applet for the purpose of generating an interactive user interface to gathering information from a client display unit such as a television set rather than a locally-stored program that generates an interface (see [col. 6, ll. 39-51] for using an applet to gather data from a client device to be later processed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the GUI used to collect information from viewers, as taught in Knudson, by using dynamically delivered applets, as taught by Hamlin, in order to enable future updates to be made to the function or appearance of the GUI without having to modify the client system.

Regarding claim 18: The combined teachings of Knudson, in view of Brown, teach a video session manager, to provide security and system administration (see [col. 3, ll. 22-31]) but are silent on accessing a personal identification database, a terminal identification database, and a subscriber database that are contained in a network manager.

Good teaches where a subscriber can be identified using a PIN, terminal identification number, or an account number (see [fig. 1 items 102 & 104], [pp. 2-3, ll. 33-5], [pp. 6-7, ll. 24-1], [col. 7, ll. 6-9]).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to use other forms of identification such as PIN, terminal identification number or account number stored in a look-up-table, as taught in Goode, when providing authorization techniques for subscription on-demand services, as taught in Knudson, because providing a alternate forms of identification provides more flexible and useful security measures (see [col. 1, ll. 52-56]).

Hamlin teaches the use of a dynamically delivered applet for the purpose of generating an interactive user interface to gathering information from a client display unit such as a television set rather than a locally-stored program that generates an interface (see [col. 6, ll. 39-51] for using an applet to gather data from a client device to be later processed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the GUI used to collect information

from viewers, as taught in Knudson, by using dynamically delivered applets, as taught by Hamlin, in order to enable future updates to be made to the function or appearance of the GUI without having to modify the client system.

(10) Response to Argument

I. Rejection of Claims 1-6.

A.1. Claim 1.

1. The appellant argues that the combination of Knudson, Brown and Hamlin fail to teach or suggest all the claimed elements. Specifically, Knudson fails to disclose, "enabling a subscriber to access any on-demand program within a subscribed programming package on an on-demand basis by allowing the subscriber to interface with one or more menu applets." The examiner disagrees.

While the appellant recognizes that the examiner has acknowledged that Knudson alone, fails to disclose all of said features, citing Brown and Hamlin to teach the missing features, the appellant fails to acknowledge key features which are disclosed in Knudson which contribute to the combination.

Knudson teaches an interactive system which seeks to replace antiquated "order...by calling" methods previously used to provide subscribers with subscription channels and programming packages information or order request, by providing an interactive process which

facilitates the ordering of such packages by creating a system of menus which allow subscribers to interact directly with the provider to order his or her desired program (see [col. 1, ll. 19-52] for the object of the present invention; see also [col. 1, ll. 55-65], [col. 4, ll. 38-47] for displaying various pay program ordering menus on the television; see also [col. 6, ll. 58-4] for impulse ordering using the program menus). While Knudson teaches this system of programming menus to provide near video-on-demand subscriptions, Knudson presents a workable solution to providing users with ordering from a single device, independent, or nearly so, of a customer service representative or automated system (see [col. 9, ll. 6-9]). As such, it is clear that Knudson teaches, enabling a subscriber to access any on-demand program within a subscribed programming package in an near on-demand basis by allowing the subscriber to interface with one or more programming menus.

2. The appellant further argues that Brown fails to cure Knudson's deficiencies. Specifically, the appellant argues that the examiner has recited a different limitation than that which is actually claimed and appears to suggest that the teachings in Brown are therefore lacking. Examiner disagrees.

i. The examiner apologizes for any confusion caused by such paraphrasing, however patentable weight was accorded to each claim as originally recited and submitted. With respect to the key

descriptor, "any" the examiner would like to note that the descriptor "any" from the claim which recites, "enabling a subscriber to access any on-demand program" was intentionally removed when restating what Knudson fails to teach, and was not included in the statement which was written to capture the features that would be taught by another reference, as Knudson teaches allowing the subscriber to access "any program within a subscribed programming package" (see [col. 4, ll. 58-65], [col. 6, ll. 22-41] for allowing a subscriber to access any specific subscription program or create a personalized subscription package referred to as an "a la carte" package). Knudson teaches a system which provides subscribers with the ability to select subscription channels and programming packages on a near video-on-demand basis, providing access to any program title to which the user has subscribed, but is silent regarding the ability to provide the selected titles immediately in an "on-demand" basis. For this reason the examiner has isolated this feature by removing the "on-demand" language, but showing that Knudson teaches, "enabling a subscriber to access any on-demand program within a subscribed programming package in an *near on-demand basis* by allowing the subscriber to interface with one or more programming menus" to demonstrate that while "any" program to which the subscriber has subscribed, can be accessed in a "*near*

video-on-demand" basis, accessing "any" program in an "on-demand" basis (i.e. giving additional weight to the differences between NVOD and VOD services) is not explicitly taught (see specification [pg. 1, ll. 19-25] where the appellant has indicated that the instant application is drawn to a video-on-demand distribution system). (Italics added for emphasis).

ii. The appellant also argues that the examiner's assertion that the references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. Further, the appellant submits that the purported combination of Knudson and Brown must not only be operable, but it must also support a reasonable expectation of success in the mind of a person of ordinary skill in the art. The appellant then concludes that the two systems of Knudson and Brown are incompatible because combining the two arrangements would destroy the functionality of either arrangement because Brown is mainly directed to near video-on-demand and when it comes to video-on-demand, Brown isn't quite sure about the results and cites Brown column 3, lines 37-51 as support. The examiner disagrees.

Brown contemplates offering video-on-demand to subscribers as an alternative to near video-on-demand (see [col. 2,

ll. 37-45], [col. 4, ll. 3-15]). This in and of itself, would lead one of reasonable skill in the art to modify Knudson to offer video-on-demand, as taught in Brown, because such a combination would have provided more than a reasonable expectation of success by the mere fact that Brown is able to provide both options to the subscriber, thus providing the subscriber with the ability to exercise trick play features (see [col. 3, ll. 31-41] for fast forward, rewind, pause, etc.). The appellant cites column 3, lines 37-51 of Brown suggesting that because the video distribution system has some upper limit on its available bandwidth (see [col. 1, ll. 41-54]), that Brown is not sure about the results, of providing video-on-demand for a near video-on-demand system. To the contrary, Brown is sure about the results and has designed this system with the intentioned goal of providing video-on-demand when it is available rather than limiting subscribers to near video-on-demand when more resources are available (see [col. 2, ll. 37-45]). For these reasons combining the features of Brown with that of Knudson would "[enable a subscriber to access any on-demand program within a subscribed programming package on an on-demand basis by allowing the subscriber to interface with one or more programming menus]".

3. The appellant argues that Hamlin does not cure the deficiencies of Knudson and Brown. Specifically, the appellant states that the examiner

has left out key phrases and introduced phrases that are not recited in the limitation; suggesting that the teachings of Hamlin are therefore lacking. The examiner apologizes for any confusion caused by such paraphrasing, however patentable weight was accorded to each claim as originally recited and submitted. The examiner's paraphrasing was used in an attempt to capture the system and its features, which were not singly represented in a single reference. However, the examiner disagrees with appellants statements regarding said deficiencies.

While it is correct that the examiner used the term, "*dynamically delivered applet*", which the appellant has directed to being intended to read on "dynamically defining subsets" due to the shared use of "*dynamically*", to the contrary, Hamlin was not introduced for the purpose of teaching "dynamically defining subsets" as it appears the appellant suggests. Hamlin teaches using the applet as an alternative to interfacing with users through the conventional locally-stored program which generates user interfaces. Specifically, Hamlin teaches that it is well known to use applets, similarly to locally-stored program interfaces, which read on programming menus or interfaces, to present and gather information for users in the same manner as said locally-stored program interfaces, but providing a dynamic feature not available to locally-stored program interfaces (see [col. 6, ll. 39-51] where Hamlin specifically refers to the use of such applets as, "*dynamically delivered JAVA applets*" since

they do not originate from the end user equipment). Therefore, given the interchangeable nature of program interfaces and dynamically delivered Java applets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the locally-stored program interfaces provided to the user, to display and gather information for the user, with the said applets, as taught in Hamlin, because using applets increases the longevity of end user equipment by allowing user interfaces, more specifically individual applet user interfaces, to be modified or upgraded rather than necessitating a plurality of end user devices to upgrade their locally-stored programs used to generate said program interfaces.

4. The appellant again suggests that the examiner's rejection of claim 1 compensates for gaps and ambiguities in the teachings of the prior art by resorting to improperly paraphrasing the claimed limitation to thereby piece together the claimed invention using hindsight to manufacture a conclusion. The examiner disagrees.

Given the aforementioned reasons, the examiner believes that each reference demonstrates, in and of itself, reasons for modifying or replacing one feature with another to create a more robust system, where each modified feature adds additional functionality or equipment savings to enhance the service provided to the user and to provide future maintenance cost savings.

5. The appellant argues that the examiner's reasons to combine were conclusory statements such that the examiner's burden was not met. The examiner disagrees.

Both Brown and Hamlin provide support to uphold the "reasons to combine" as provided by the examiner. For the combination of Knudson with Brown, the examiner stated that such a combination would, "[allow] viewers greater flexibility and control over content". This captures the very intent of Brown who states that the expectation of interactive services is to "allow [] viewers greater flexibility and control over content, the presentation time, and the presentation format of their selected interactive applications" (see [col. 1, ll. 20-28]). Thus, Brown endeavors to meet viewers' expectations by solving the problem of unnecessarily limiting viewers, who subscribe to interactive communication systems but only receive NVOD services, by providing them with the ability to receive VOD (see [col. 2, ll. 37-45]). The examiner would also like to point out that given the broadest reasonable interpretation of "on-demand" it would be within reason to interpret NVOD as providing an on-demand service as claimed, however the examiner included Brown to demonstrate that "instant" "on-demand" delivery would be an obvious compliment to such a system, to one of ordinary skill in the art.

Likewise, Hamlin recognizes that JAVA applets are "dynamic" in that because they originate from remote sources such as the internet or

some other network, as opposed to "locally-stored" programs, they are not limited to the program interfaces confined to the storage of a local device. Thus, one of ordinary skill in the art would reasonably conclude that because of the way in which applets can be used and distributed, one does not have to update end user hardware to update a Java applet, thus saving the time associated with local updates for a plurality of machines and the related cost.

6. For the aforementioned reasons the examiner believes that the examiner has met the burden of demonstrating that the combination of Knudson, in view of Brown and Hamlin would have been obvious to combine and meets the limitations claimed.

A.2. Claims 2-6.

Knudson teaches an interactive system which seeks to replace antiquated "order...by calling" methods previously used to provide subscribers with subscription channel and program package information or order requests, by providing an interactive process which facilitates the ordering of such packages by creating a system of menus which allow subscribers to interact directly with the provider to order his or her desired program (see [col. 1, ll. 19-52] for the object of the present invention; see also [col. 1, ll. 55-65], [col. 4, ll. 38-47] for displaying various pay program ordering menus on the television; see also [col. 6, ll. 58-4] for impulse ordering using the program menus). To provide subscribers with the

flexibility that they need, Knudson teaches offering a number of programming packages, which read on subscriptions, including an "a la carte" package that provides authorization for a "selectable subset of a number of subscription channels" (see [col. 6, ll. 21-58]). Traditionally the term "a la carte" suggest that a purchaser can create his or her own meal by piecing together personally selected items to make the meal. The invention taught by Knudson is no different; allowing a subscriber to "dynamically define" by selecting individual programs "subsets of content to be created as a personal subscription on-demand", where the "a la carte" package is one of several pre-defined packages but differs in that the subscriber can define or create his or her own personal subscription which at it's completion will be a subset of what is available to all subscribers (see also [col.1, ll. 19-41]).

As discussed earlier, while Knudson only teaches providing NVOD services, Brown teaches where it would have been obvious to use VOD as available to the added benefit of immediate programming with additional trick play features. (see Section I. A.1. 2 regarding the combination of Knudson and Brown).

II. Rejection of Claims 7-9, 12 and 13.

A.1. Claim 7.

1. The appellant argues that Knudson fails to teach a graphical user interface. The appellant refers to the specification which reads, "The invention is implemented as one or more interrelated 'applets' which, when taken together form the interactive graphical user interface..." (see [pg. 13, ll. 21-23]). While the examiner can appreciate this characterization which may appear to limit the definition of a graphical user interface GUI to "one or more interrelated applets". The broadest reasonable interpretation in light of the specification of applet is simply a program that can be downloaded over the internet and executed on the recipient's machine, typically for the purpose of adding interactive elements. Likewise the broadest reasonable interpretation in light of the specification of a graphical user interface is a visual computer environment that represents options with graphical images such as icons, menus and dialog boxes on a screen which a user can select. The specification exemplifies the graphical user interface by it's function of "facilitating" and provides one means of creating a GUI which is by "one or more interrelated applets" (see pg. 13, ll. 21-25) but does not modify the accepted definition of a GUI. Thus the examiner is not precluded from recognizing the teachings in Knudson which disclose a simple form of GUI which is based on program interfaces which provide a graphical interface to the user, allowing the user to highlight, select and submit a selection to receive access to desired subscription(s) (see [fig. 2], [fig. 7], [col. 4, ll. 38-47], [col. 7, ll. 5-

18)). Furthermore while the specification describes one means by which a GUI can be created, the specification also lays out the underlying purpose of the GUI specific to this application as "[facilitating] the [subscription on-demand] service". While Knudson as recognized by the examiner does not in and of itself teach the use of applets, in view of the prior art, more specifically Hendricks and Gordon, the combined teachings provide the features that Knudson does not. For example, Hendricks demonstrates through a series of graphical user interfaces, the use of program guide menus which are used for providing to users a series of menus and submenus designed to facilitate the user in accessing a subscription, if the user is already a subscriber, or subscribing to a subscription program if the user is not already a subscriber (see Hendricks [figs. 13-19, 20c-25]). Applicant fails to consider the references as a whole to appreciate the combination of related features provided in each reference as taught by Knudson, in view of Hendricks and Gordon. The examiner does not simply rely upon Knudson or Hendricks to teach presenting a GUI through a series of menus and submenus, but also relies on Gordon for the teaching of using applets to replace program menus and submenus, to accomplish a similar functionality as detailed in the specification, which is to facilitate a user in selecting service options (see Gordon [fig. 8], [fig. 12], [abstract], [col. 4, ll. 29-44], [col. 13, ll. 48-67] for the general use of applets as menu interfaces).

2. The appellant argues that the examiner fails to establish a prima facie showing of obviousness because the combination of Knudson, Hendricks and Gordon fail to teach or suggest all the claim limitations. Specifically, claim 7 recites nine (9) limitations and the appellant argues that the examiner failed to address each and every limitation of claim 7 with a degree of clarity allowing the applicants to ascertain the veracity of the examiners assertion. Examiner disagrees.

While the examiner is unable to determine which limitation(s) the appellant is referring to as not having been addressed, as the appellant has not specifically indicated what is lacking, with respect to the GUI comprising applets as opposed to the program interfaces of Knudson, the examiner relied upon Gordon to teach the use of applets as maintained by the video session manager. Gordon describes these as a "linked list of applet interrelations such that when the set top terminal sends a command via the back channel, the video session manager interprets the command and causes the server to send the appropriate applet" (see [cols. 13-14, ll. 47-11]; see also [col. 2, ll. 56-60] where the menu structure is defined by Gordon as, "a series of interconnected 'applets'...[containing] certain data for producing interactive menu imagery..."). The examiner merely introduced Knudson's GUI features to demonstrate that Knudson and Gordon share using graphical user interfaces as a means to facilitate user interactions such as selecting and entering options which may or may not

lead to a follow up or corresponding interface (see Knudson [col. 4, ll. 38-47] for causing an ordering menu to be displayed in response to a selection from a prior menu). The examiners desire to highlight the similar uses of graphical user interfaces in Knudson was not intended to overshadow the teachings of the supporting references.

3. The appellant argues that the examiner has made rejections on obviousness which cannot be sustained by mere conclusory statements. Specifically the appellant states that the examiner fails to provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. The examiner disagrees.

The appellant describes the examiner's motivation for combining Knudson and Gordon, which states that it would have been obvious to combine for the benefit of "[simplifying] the involvement on behalf of the customer who would like to immediately view desired programming and in order to provide a more dynamic and customizable interactive experience" as a conclusory statement (see pg. 17). The examiner disagrees and refers the appellant to Gordon who specifically teaches that one of the purposes of providing menu structure such as this is for "providing an enjoyable, real-time interactive session that allows the user to rapidly navigate through a plethora of menu to find particular information, which they desire to view" (see [abstract]). Therefore the examiner's motivation for combining is explicitly supported by Gordon.

4. For the aforementioned reasons the examiner believes that the combination of Knudson, in view of Hendricks and Gordon meet the limitations claimed and have meet the burden placed on the examiner to provide a reason to combine.

A.2. Claims 8-9, 12 and 13.

The appellant further argues that "there are missing claimed features not taught/suggested by the cited references including "decoding and executing said third menu applet within said subscriber equipment to display a third interactive user interface through which the subscriber can become a subscriber to the selected service" (see pg. 18). The examiner disagrees.

Hendricks teaches a similar system which provides user interfaces to facilitate subscribers in making selections of the provided on-demand subscriptions (see [abstract], [col. 25, ll. 4-20]). Hendricks also provides an interrelated system of menus which provides, inter alia, said second and third menus; where a second menu is representative of allowing a subscriber access to begin viewing already-subscribed-to content and the third menu representative of allowing a subscriber to begin a subscription if he or she has not already subscribed (see [figs. 22-24], [col. 38, ll. 7-42] where a viewer is presented with programming options such that if the viewer is determined to already have a paid subscription the viewer is presented with menu 1056 of fig. 22d, informing the viewer of a pre-existing subscription and allowing the subscriber to join the channel in progress upon selecting to continue to said program by entering "Go";

however if the viewer does not have a pre-existing subscription the viewer is instead presented with what reads on a third menu, menu 1054 of fig. 22c, offering the viewer to subscribe to the program wherein after the viewer has subscribed to said program the now subscriber can join the channel in progress).

As recognized in earlier statements, Hendricks does not teach the use of applets for presenting said menus, thus, the examiner relied upon Gordon to teach the use of applets. Gordon describes these as a "linked list of applet interrelations such that when the set top terminal sends a command via the back channel, the video session manager interprets the command and causes the server to send the appropriate applet" (see [cols. 13-14, ll. 47-11]; see also [col. 2, ll. 56-60] where the menu structure is defined by Gordon as, "a series of interconnected 'applets'...[containing] certain data for producing interactive menu imagery..."). Furthermore Gordon teaches using said applets in a distribution system (see [abstract]) to be presented as menus on a display via a receiver which receives the applets. As would be expected in such a distribution system, it is necessary for the applet to first be decoded after being received by the receiver and then executed to be presented as a menu for the user to interact with said menu ([col. 3, ll. 13-31], [col. 3, ll. 32-51, [col. 6, ll. 19-29] for decoding received data and where the general definition of an applet is a program that can be downloaded and executed on a recipient machine).

III. Rejection of Claims 10 and 11.

Hendricks teaches a similar system which provides user interfaces to facilitate subscribers in making selections of the provided on-demand subscriptions (see [abstract], [col. 25, ll. 4-20]). Hendricks also provides an interrelated system of menus which provides, inter alia, said second and third menus; where a second menu is representative of allowing a subscriber access to begin viewing already-subscribed-to content and the third menu representative of allowing a subscriber to begin a subscription if he or she has not already subscribed (see [figs. 22-24], [col. 38, ll. 7-42] where a viewer is presented with programming options such that if the viewer is determined to already have a paid subscription the viewer is presented with menu 1056 of fig. 22d, informing the viewer of a pre-existing subscription and allowing the subscriber to join the channel in progress upon selecting to continue to said program by entering "Go"; however if the viewer does not have a pre-existing subscription the viewer is instead presented with what reads on a third menu, menu 1054 of fig. 22c, offering the viewer to subscribe to the program wherein after the viewer has subscribed to said program the now subscriber can join the channel in progress).

As recognized in earlier statements, Hendricks does not teach the use of applets for presenting said menus, thus, the examiner relied upon Gordon to teach the use of applets. Gordon describes these as a "linked list of applet interrelations such that when the set top terminal sends a command via the back channel, the video session manager interprets the command and causes the server to send the appropriate applet" (see [cols. 13-14, ll. 47-11]; see also [col.

2, ll. 56-60] where the menu structure is defined by Gordon as, "a series of interconnected 'applets'...[containing] certain data for producing interactive menu imagery..."). Furthermore Gordon teaches using said applets in a distribution system (see [abstract]) to be presented as menus on a display via a receiver which receives the applets. As would be expected in such a distribution system, it is necessary for the applet to first be decoded after being received by the receiver and then executed to be presented as a menu for the user to interact with said menu ([col. 3, ll. 13-31], [col. 3, ll. 32-51, [col. 6, ll. 19-29] for decoding received data and where the general definition of an applet is a program that can be downloaded and executed on a recipient machine).

IV. Rejection of Claims 14-18.

A.1. Claim 14.

The appellant argues that Knudson alone or in combination with Brown, Goode, and Hamlin fails to teach all elements of independent claim 1 and, as such, independent claim 14 also is patentable under 35 U.S.C. Section 103(a) over Knudson in combination with Brown, Good and Hamlin. Specifically, "dynamically defining subsets of content to be created as personal SOD" is not taught by the aforementioned references. The examiner disagrees.

The appellant appears to focus on the phrase, "dynamically delivered applet" more specifically, the word "dynamic" and assumes that it somehow relates to "dynamically defining subsets" rather than recognizing that the phrase is taken directly from the Hamlin reference (see [col. 6, ll. 39-51]) and is

regarding the use of applets in the place of program interface menus. The two are not related. Rather than focusing on Hamlin, the examiner suggests looking to Knudson where the teaching of "dynamically defining subsets of content to be created as personal SOD" is taught.

Knudson teaches an interactive system which seeks to replace antiquated "order...by calling" methods previously used to provide subscribers with subscription channels and programming packages information or order request, by providing an interactive process which facilitates the ordering of such packages by creating a system of menus which allow subscribers to interact directly with the provider to order his or her desired program (see [col. 1, ll. 19-52] for the object of the present invention; see also [col. 1, ll. 55-65], [col. 4, ll. 38-47] for displaying various pay program ordering menus on the television; see also [col. 6, ll. 58-4] for impulse ordering using the program menus). To provide subscribers with the flexibility that they need Knudson teaches offering a number of programming packages, which read on subscriptions, including an "a la carte" package that allows an authorization for a "selectable subset of a number of subscription channels" (see [col. 6, ll. 21-58]. Traditionally the term "a la carte" suggest that a purchaser can create his or her own meal by piecing together personally selected items to make the meal. The invention taught by Knudson is no different, allowing a subscriber to "dynamically define" by selecting individual programs "subsets of content to be created as a personal subscription on-demand", where the "a la carte" package is one of several pre-defined packages

but differs by the fact that the subscriber can define or create his or her own personal subscription which at its completion will be a subset of what is available to all subscribers (see also [col.1, ll. 19-41]).

A.2. Claim 15.

The appellant has made no specific arguments other than those directed to the independent claims.

A.3. Claim 16.

The appellant has made no specific arguments other than those directed to the independent claims. Specifically claim 14.

A.4. Claims 17-18.

The appellant has made no specific arguments other than those directed to the independent claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jason Thomas/
Examiner, Art Unit 2423

Conferees:

/Andrew Y Koenig/
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